

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
MAR 25 12 05 PM '93

DISPATCHED BY MM Docket No. 93-64

In the Matter of

Amendment of Section 73.202(b), RM-8195
Table of Allotments,
FM Broadcast Stations.
(Corning, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 8, 1993; Released: March 25, 1993

Comment Date: May 17, 1993

Reply Comment Date: June 1, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Phoenix Broadcasting, Inc. ("petitioner"), licensee of Station KCEZ(FM), Channel 264B, Corning, California, seeking the substitution of Channel 264C1 for Channel 264B and modification of its license accordingly.¹ Petitioner stated its intention to apply for Channel 264C1 if allotted to Corning, as requested.

2. We believe the public interest would be served by consideration of petitioner's proposal since it could provide Corning with an expanded coverage area FM service. Channel 264C1 can be allotted to Corning consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site, located 37.7 kilometers (23.4 miles) north of the community.²

3. Petitioner's modification request at Corning conforms with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the license for Station KCEZ(FM) without entertaining competing expressions of interest in the use of Channel 264C1 at Corning, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

¹ Petitioner states that its present transmitter site, located south of the 40° parallel in Zone I-A, at coordinates 39-53-17 and 122-37-38, is licensed as a Class B facility, the highest class allowed in that Zone. The instant proposal would relocate its transmitter to Zone II, where the maximum FM facilities authorized are for Class C stations. See Sections 73.202(a), 73.205, and 73.210 of the Commission's Rules.

² Coordinates used for Channel 264C1 at Corning are 40-15-31 and 122-05-20. Although the Corning proposal is short-spaced to the licensed operation of Station KWHO(FM), Channel 265A, Weed, California, at coordinates 41-21-12 and 122-15-35, Station KWHO(FM) was modified effective September 4, 1990, to specify operation on Channel 272C1, for which a construction per-

4. In view of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Corning, California, as follows:

City	Present	Proposed
Corning, California	264B	264C1

5. IT IS ORDERED, That the Secretary shall send a copy of this Notice to the licensee of Station KWHO(FM), as follows: Tristar Broadcasting Corporation, Inc., P.O. Box 1023, Weed, CA 96094.³

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 17, 1993, and reply comments on or before June 1, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dennis J. Kelly, Esq.
Cordon and Kelly
Post Office Box 6648
Annapolis, MD 21401

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or

mit has been issued (File No. BPH-901130ID). See MM Docket No. 88-28, 5 FCC Rcd 4558 (1990), *recon. denied*, 7 FCC Rcd 4641 (1992). Although we have determined that issuance of this Notice of Proposed Rule Making is appropriate at this time, we may withhold final action in this matter until Station KWHO(FM) is granted a license to operate on Channel 264C1 at Weed. We will serve a copy of this Notice on Tristar Broadcasting Corporation, Inc., licensee of Station KWHO(FM).

³ Florence M. Gasky ("Gasky") was the licensee at the time Station KWHO(FM) was modified to specify operation on Channel 272C1 at Weed in MM Docket No. 88-28. An assignment of the license from Gasky to Tristar Broadcasting Corporation, Inc. was granted June 16, 1992, and consummated July 1, 1992.

review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.